Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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| **In the Matter of** | ) | |
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| **Access Charge Reform** | ) | **CC Docket No. 96-262** |
| | ) | |
| **Price Cap Performance Review for Local Exchange Carriers** | ) | **CC Docket No. 94-1** |
| | ) | |
| **Low-Volume Long Distance Users** | ) | **CC Docket No. 99-249** |
| | ) | |
| **Federal-State Joint Board on Universal Service** | ) | **CC Docket No. 96-45** |
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# MCI WORLDCOM COMMENTS ON THE MODIFIED CALLS PLAN

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## MCI WORLDCOM COMMENTS ON THE MODIFIED CALLS PLAN

MCI WorldCom, Inc. (MCI WorldCom) hereby submits its comments on the modified access charge and universal service proposal filed with the Commission on March 8, 2000 by the Coalition for Affordable Local and Long Distance Services (CALLS).

## I. Introduction and Summary

The original CALLS plan's obvious strengths, such as the proposed steep reductions in switched access charges, were offset by equally obvious weaknesses. Commenters criticized, in particular, the fact that the original proposal would have provided the ILECs with more revenue than they would have received under the current rules. That aspect of the plan led, inevitably, to end user charges that were much higher than could be justified by the CALLS signatories. Several commenters expressed concern about the potential impact of the inflated end user charges and other features of the CALLS plan on low-volume residential customers.

In an attempt to address concerns about the level of ILEC revenues under the CALLS plan, the potential impact of the plan on low-volume residential customers, and other issues raised by commenters, CALLS has modified its proposal in several respects.[1] The modified plan (1) reduces ILEC revenues in the first year by an additional $400 million, relative to the original plan; (2) establishes lower residential SLC caps than the original plan; and (3) applies X-factor reductions to the special access basket in 2000, 2001, 2002, and 2003, rather than freezing special access rates. The modified plan would retain the low-end adjustment mechanism, which would have been eliminated under the original plan.

In addition, the interexchange carrier (IXC) signatories to the CALLS plan have filed letters with the Commission that make certain commitments regarding their long-distance pricing. AT&T has committed that it will eliminate minimum usage charges for its basic schedule long distance customers, and Sprint has committed that it will not impose a minimum usage charge on at least one basic rate plan for the duration of the CALLS plan. MCI WorldCom notes that its chief executive officer announced, prior to these offered commitments, that MCI WorldCom will step up competition for low-volume residential customers by offering a nationwide plan with no minimum usage or

[1]Letter from John T. Nakahata, Harris, Wiltshire & Grannis LLP, to Magalie R. Salas, FCC, March 8, 2000.

monthly fee, a statement that MCI WorldCom understands to be the same as the Sprint commitment.[2]

## A. CALLS Should Be Required to File its Impact Estimates

Before the Commission even begins to consider the adoption of the CALLS plan, it should require CALLS to file, on the public record, its detailed estimates of the impact of the modified plan on end users and other interstate access customers. For reasons that MCI WorldCom cannot understand, CALLS has declined to file its estimates on the record -- even though it filed such data on the record in conjunction with the original plan.[3] CALLS has also informed MCI WorldCom that it will provide such estimates to interested parties only if they do not "use, refer to, or cite the data or any information derived therefrom before any government body or in any state or federal proceeding, including proceedings in which the CALLS plan is currently under consideration."[4]

CALLS has given MCI WorldCom only two reasons for seeking to restrict public discussion of its impact estimates, neither of which has any merit. The first reason cited

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[2]MCI WorldCom Press Release, January 12, 2000.

[3]CALLS filed detailed year-by-year, LEC-by-LEC projections for the original plan in a September 2, 1999 ex parte, well before the deadline for filing comments on the original plan. Letter from Evan R. Grayer, Harris, Wiltshire & Grannis LLP, to Magalie R. Salas, FCC, CC Docket Nos. 94-1; 96-45; 99-249; 96-262; September 2, 1999.

[4]Letter from Evan R. Grayer, Harris, Wiltshire & Grannis LLP, to Mary L. Brown, MCI WorldCom, March 22, 2000. A copy of this letter and other correspondence between CALLS and MCI WorldCom regarding this matter is included as Attachment 1 to these comments.

by CALLS – a concern that its estimates could be used in a manner "potentially adverse to CALLS members"[5] – provides all the more reason for the Commission to require CALLS to file its projections. If the CALLS coalition's own data does not support the coalition's claims, then surely the Commission must have the opportunity to examine that data. The second reason given by CALLS – that the projections it has generated are "preliminary" – suggests that the Commission cannot possibly endorse the CALLS agreement in its present form. The Commission cannot endorse an agreement that is in flux and so ill-defined that even the signatories cannot quantify its effects.

Given that CALLS is asking the Commission to adopt a privately-negotiated agreement, and that the coalition's estimates can best illuminate CALLS' interpretation of the agreement's various provisions, public filing of the CALLS estimates is essential to ensuring that CALLS members and the Commission have a common understanding of the agreement. Moreover, the CALLS coalition's estimates would provide a common starting point for consumer groups, state commissions, and other interested parties to discuss the public policy issues raised by the CALLS plan, thus benefitting the Commission's consideration of the proposal. The comments and reply comments should be focused on the larger policy issues raised by CALLS, not disagreements about the reasonableness of various parties' estimates.

Because the Commission cannot evaluate the reasonableness of the CALLS plan without first quantifying the effect of the plan on the ILECs and their customers, and

[5]Letter from John T. Nakahata to Mary L. Brown, March 23, 2000 (see Attachment 1 to these comments).

CALLS has refused to provide its estimates, MCI WorldCom has independently modeled the impact of the modified CALLS plan. MCI WorldCom's estimates are provided in Attachment 3 to these comments. To facilitate comparison with the data previously filed by CALLS, MCI WorldCom has presented its data in generally the same format as the CALLS September 2, 1999 ex parte filing. And, to the extent possible, MCI WorldCom's estimates make the same assumptions concerning inflation, demand growth, and other factors as CALLS made in its September 2, 1999 filing.

**B. All Issues Raised by the CALLS Coalition or its Members Should be Placed on the Public Record**

The Commission should also require CALLS to disclose the details of any additional requests that members of CALLS may have made to the Common Carrier Bureau (Bureau). The suggestion has been made that CALLS members have attempted to tie the outcome of the CALLS plan to issues raised in at least two separate proceedings. If some or all CALLS participants have suggested a connection between the outcome or timing of these separate proceedings, that fact is important because it would permit the public to comment on whether the various outcomes suggested by such CALLS members would, taken as a whole, serve the public interest.

It is MCI WorldCom's understanding that one of the issues that may have been raised concerns the possibility that the Bureau will support at least a one-year extension of the use restriction on unbundled loop and transport combinations adopted in the

Supplemental Order in CC Docket No. 96-98.[6] In that order, the Commission adopted an "interim" measure that prohibits IXCs from converting special access circuits to unbundled loop and transport combinations except where the IXC uses combinations of unbundled loop and transport network elements to provide a significant amount of local exchange service, in addition to exchange access service, to a particular customer.[7] The Commission emphasized that the use restriction would remain in effect only until the resolution of the Fourth FNPRM[8] in CC Docket No. 96-98, which the Commission stated would occur on or before June 30, 2000.[9]

On March 13, 2000, MCI WorldCom wrote the Chief of the Common Carrier Bureau to ask whether the Commission's June 30, 2000 deadline for resolving the Fourth FNPRM continues to be the Bureau's understanding of the date by which the final rule must issue.[10] To date, MCI WorldCom has received no response to this status inquiry.

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[6]Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Supplemental Order, CC Docket No. 96-98, rel. November 24, 1999.

[7]Id. at ¶¶ 4-5.

[8]Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, rel. November 5, 1999 (UNE Remand Order/Fourth FNPRM).

[9]Supplemental Order at ¶ 4.

[10]Letter from Jonathan B. Sallet, Chief Policy Counsel, MCI WorldCom, to Lawrence Strickling, Chief, Common Carrier Bureau, FCC, March 14, 2000 (see Attachment 2 to these comments).

It is MCI WorldCom's understanding that the second potential issue that may be linked to the CALLS plan involves the possibility that the Bureau will support changes to the Commission's depreciation rules. MCI WorldCom notes that the Commission has released today a Further Notice of Proposed Rulemaking that proposes to "evaluate the conditions under which [the Commission's] existing depreciation rules may be eliminated or changed for all price-cap carriers."[11] This proceeding will also consider whether the RBOC and GTE continuing property record audits, which found that these carriers could not account for over $5 billion in equipment shown on their books, would be "rendered moot" if the price cap ILECs were permitted to amortize any difference between their financial and regulatory books.[12] MCI WorldCom will address these issues in its comments on April 17, 2000.

### C. The Commission Should Not Adopt the Modified CALLS Plan

MCI WorldCom cannot support the modified CALLS plan. An indefinite extension of the Supplemental Order's use restriction on loop and transport combinations, until at least mid-2001, and the resulting delay in the development of broad-based competition in the special access market, is too high a price for the Commission to pay for the modified CALLS proposal.

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[11] 1998 Biennial Review; Ameritech Corporation Telephone Operating Companies' Continuing Property Records Audit; Further Notice of Proposed Rulemaking, CC Docket No. 98-137; CC Docket No. 99-117, FCC 00-119, rel. April 3, 2000.

[12] Id. at ¶ 15.

Because special access services provide the vital "on ramp" to Internet services and to advanced services, the special access market is quickly becoming as important as the switched access market. In 1998, for example, the growth in demand for Internet and data services drove a 25 percent increase in ILEC special access demand and revenue; in contrast, ILEC interstate switched access minutes grew only 6 percent.[13] Given the growing importance of the special access market to the Internet and advanced services, the Commission should not delay the development of broad-based competition in the special access market. The harm to special access customers and competitors resulting from an extension of the Supplemental Order's use restriction will become acute if the ILECs begin to obtain pricing flexibility under the Pricing Flexibility Order's Phase I/Phase II framework.[14]

The Commission should recognize that the modified CALLS plan tramples competition and consumer interests in the pursuit of minor "modifications" to the residential SLC cap increases and other flaws in the original CALLS plan. The much-touted additional reductions in LEC revenues, relative to the original version of CALLS, only look significant only because LEC revenues under the original plan were so inflated.[15] As an initial matter, the additional first-year revenue reduction is only about

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[13]Statistics of Communications Common Carriers, Table 2.10 (demand data); 2.9 (special access revenue data).

[14]Access Charge Reform, Fifth Report and Order, 14 FCC Rcd 14221 (1999) (Pricing Flexibility Order).

[15]By 2004, as the CALLS coalition's own data showed, ILEC annual revenues would have been over $4 billion per year higher under the original CALLS plan than under the current rules. See attachment to ex parte letter from Bradley C. Stillman,

$400 million.[16] Moreover, as is shown in Attachment 3, the ILECs can still expect to receive more revenue under the modified CALLS plan than they would have received under the current rules.[17]

Some of the revisions to the CALLS plan are clearly negative, such as the reinstatement of the low-end adjustment mechanism. Reinstatement of the low-end adjustment mechanism could allow some of the ILECs to take back part of the only "concession" they have made during the CALLS process -- the $400 million additional revenue reduction in the first year of the plan. And, while MCI WorldCom supports the reduction in residential SLC rates, the Commission should recognize that this revision to the CALLS plan could result in significantly higher multiline business PICC charges than under the original plan. Unfortunately, CALLS has elected not to file the data that would be probative of this important issue.

If the Commission does, nonetheless, adopt the CALLS plan, the Commission should take the following steps (which MCI WorldCom discusses in greater detail in Section III, below):

- If the Commission extends the deadline for resolving the Fourth FNPRM beyond June 30, 2000, the Commission should limit the harm such an extension would cause to special access customers and competitors by suspending the Phase I and Phase II pricing flexibility rules until it issues a final order resolving the Fourth

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Senior Policy Counsel, MCI WorldCom, to Magalie R. Salas, FCC, December 9, 1999.

[16] See Section III.A, below.

[17] See Attachment 3, page 1; Section III.A, below.

FNPRM. The Commission should also require the price cap ILECs to target special access X-factor reductions to less-competitive DS1 and voice grade services, at least until it issues a final order resolving the Fourth FNPRM.

- The Commission should modify the "core" CALLS access charge and universal service proposal by requiring the ILECs to, at a minimum, forego taking low-end adjustments in the 2001 and 2002 annual access filings. This will ensure that the ILECs are not able to take back part of the additional $400 million revenue reduction.
- The Commission should take steps to mitigate the impact of the lower residential SLC caps, relative to the original plan, on multiline business PICCs. These steps could include (1) requiring the ILECs to recover a portion of their multiline business PICCs directly from end users; and (2) modifying the universal service allocation formula to give higher priority to those ILECs that would otherwise continue to have a multiline business PICC.
- The Commission should limit the harm from the reinstatement of the low-end adjustment mechanism by eliminating opportunities for the ILECs to manipulate their reported earnings. The Commission should state that it will not modify, waive, or forbear from its current depreciation, cost allocation, or affiliate transaction rules during the five-year life of the CALLS plan.

## II. The Commission Must Resolve Unbundled Loop and Transport Issues by June 30, 2000

### A. Extension of the Deadline is Unlawful

In the November 24, 1999 Supplemental Order in CC Docket No. 96-98, the Commission decided to "allow incumbent LECs to constrain the use of combinations of unbundled loops and transport network elements as a substitute for special access service."[18] The Commission emphasized, however, that this use restriction was an "interim measure" that would apply only until resolution of the Fourth FNPRM in CC Docket No. 96-98, which the Commission stated would occur on or before June 30, 2000.[19]

As MCI WorldCom discussed in its initial comments on the Fourth FNPRM, the use restriction adopted in the Supplemental Order is unlawful -- even as an "interim" measure designed to last seven months.[20] While agencies are entitled to substantial deference regarding interim relief, even an interim rule cannot lawfully violate the act it is designed to implement.[21] In this case, the Commission had already concluded, in the clearest possible language, that section 251(c)(3) of the Act prohibits use restrictions such as the one adopted in the Supplemental Order.[22]

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[18]Supplemental Order at ¶ 4.

[19]Supplemental Order at ¶¶ 4, 7.

[20]MCI WorldCom Comments, CC Docket No. 96-98, January 19, 2000.

[21]See 47 U.S.C. § 154(i) (the Commission "may perform any and all acts . . . not consistent with this [Act]"); United States v. Storer Broad. Co., 351 U.S. 192, 203 (1956) ("§ 154(i) . . . grant[s] general rulemaking power not inconsistent with the Act or law").

[22]Local Competition First Report and Order, 11 FCC Rcd at 15679-15680.

Furthermore, whatever deference may have been due the Commission would be sharply diminished if the Commission were to extend the Supplemental Order's "interim" to 20 months or more.[23] In an analogous context, the D.C. Circuit has warned against "interim" periods that are measured in years, particularly when the Commission is making no discernable progress towards a final resolution.[24] By June 30, 2000, the Commission will have had over seven months to resolve the Fourth FNPRM, including more than four months since the comment cycle closed. The Commission considered this interval to be more than adequate when it "emphasize[d] that [the use restriction] will apply only as an interim measure."[25] There have been no changes in circumstance that would justify any delay in resolving the Fourth FNPRM, much less a one-year delay.

The adoption of the CALLS plan would certainly provide no justification for extending the use restriction. In fact, the CALLS plan eliminates the only rationale the Commission has ever given for the use restriction -- concern about the impact of unbundled loop and transport combinations on universal service "prior to full

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[23]MCI WorldCom understands that the LEC members of CALLS have sought an extension of the deadline for resolving the Fourth FNPRM to mid-2001. The interim rule would then be effective approximately 20 months. Given expected changes on the Commission, the interim rule may well persist beyond mid-2001.

[24]Competitive Telecommunications Ass'n v. FCC, 87 F.3d 522, 531 (D.C. Cir. 1996.

[25]Supplemental Order at ¶ 7. In emphasizing that the constraint that would apply as an interim measure, the Commission, at n.13, cited the passage in the Local Competition First Report and Order in which it stated that "[w]e can conceive of no circumstances in which the [temporary pricing constraint] would be extended further."

implementation of access charge and universal service reform."[26] At least with respect to the price cap ILECs, the Commission will, if CALLS is adopted, no longer be able to cite ongoing access charge and universal service reform proceedings as a reason to protect the ILECs from competition. After all, the purpose of the CALLS plan is to resolve access charge and universal service reform issues until 2005.[27]

The universal service provisions of the CALLS plan specifically address the only universal service-related issue the ILECs have cited in the Fourth FNPRM proceeding. CALLS shifts implicit universal service support from switched access charges to a new $650 million explicit universal service fund. Once implicit subsidies have been removed from switched access rates, the ILECs could no longer argue that migration of traffic from switched to special access (as a result of lower special access rates) would undermine universal service support flows. And, in any event, the steep reduction in per-minute charges under CALLS makes it likely that traffic would migrate to switched access, rather than from switched access.

If CALLS is adopted, and implicit universal support is shifted from the ILECs' access charges to the CALLS plan's explicit universal service mechanism, it would be clear that the Supplemental Order's use restriction has no purpose other than to

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[26] Supplemental Order at ¶¶ 3, 7.

[27] Modified CALLS Proposal at 22 (§ 6) ("The signatories agree that this proposal, without modification, is a fair and reasonable compromise plan to resolve issues relating to access and universal service for price cap LECs.") See also First CALLS Memorandum at 27 ("This proposal, taken as a whole, achieves statutory universal service goals for this five year period.")

guarantee the ILECs' revenues. As the Commission has recognized, such a measure cannot be justified in the post-1996 Act environment.[28]

## B. Extending the Use Restriction is Bad Policy

### 1. The Use Restriction will Delay the Development of Broad-based Competition in the Special Access Market

Today, competition in the special access market is limited in scope. As the Commission found in the UNE Remand Order, competitors have constructed facilities to only a limited number of buildings and end offices.[29] In general, competitive facilities are available only for entrance facilities and other high-volume, short-distance routes. On these high-density routes, CLECs have been able to overcome their economies of scale disadvantages and "prove in" facilities construction even when their initial market share is low.

Unbundled loop and transport combinations are necessary to spur competition on lower-density longer-distance routes where there is currently no alternative to the ILEC's facilities. Because construction costs are high and initial traffic volumes are low, CLECs contemplating the construction of facilities on these routes face significant economies of scale disadvantages. By using unbundled transport, in combination with unbundled loops, CLECs could overcome these economies of scale disadvantages. As

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[28] Local Competition Order at ¶ 725 ("The fact that access or universal service reform have not been completed by that date would not be a sufficient justification [for extending the restriction], nor would any actual or asserted harm to the financial status of the incumbent LECs.") (emphasis added).

[29] UNE Remand Order at ¶¶ 184-187; ¶ 333.

the Commission noted in the UNE Remand Order, "leasing the incumbent's unbundled transport facilities is likely to be significantly less costly than deploying one's own transport facilities when the competitor has a relatively small volume of traffic . . . ."[30] By using unbundled elements initially, the CLEC can acquire sufficient customers to justify the construction of transport facilities of its own.[31]

Extension of the Supplemental Order's use restriction will delay the development of broad-based competition in the special access market. And, because extension of the use restriction will delay the development of broad-based competition, ILEC special access pricing will remain subject to few competitive constraints. Due to their limited scope, the CLEC networks that are currently in place have had little impact on ILEC pricing behavior in the special access market. Without exception, all of the ILECs continue to price their trunking basket services (consisting mainly of special access) at the maximum permitted by the price cap rules.

A delay in the development of broad-based competition would have its most serious impact on customers of less-competitive lower-capacity special access services such as DS1 and voice grade circuits. The table below shows that the RBOCs have actually been able to increase rates for these less-competitive services over the past three years. The table shows that, with the exception of Pacific Bell, every RBOC's current Service Band Index (SBI) for the DS1 and voice grade service categories is higher than the June 30, 1997 SBIs for these service categories.

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[30]UNE Remand Order at ¶ 76.

[31]UNE Remand Order at ¶ 80.

The pattern of rate increases over the last three years shows that customers of less-competitive DS1 and voice grade services were most affected by the Access Reform Order's policy of targeting trunking basket X-factor reductions to the Transport Interconnection Charge (TIC). As a result of this policy, almost no X-factor reductions were applied to special access services in the 1997, 1998, and, to a lesser extent, 1999 annual access filings. In the absence of X-factor reductions — or effective competition — the ILECs were able to maintain or actually increase special access rates.

**TABLE**

| | **DS1 SBI 6/30/97** | **DS1 SBI Current** | **VG SBI 6/30/97** | **VG SBI Current** |
|---|---|---|---|---|
| Ameritech | 74.3389 | 89.1436 | 101.4493 | 105.3276 |
| BA-North | 72.7855 | 76.3921 | 107.9350 | 109.5355 |
| BA-South | 74.8858 | 76.3921 | 92.5035 | 109.5355 |
| BellSouth | 81.2800 | 85.1290 | 96.3610 | 98.7058 |
| Pacific | 74.3895 | 72.2999 | 92.7073 | 87.2400 |
| SWBT | 73.5939 | 74.6934 | 96.7943 | 96.9650 |
| U S West | 81.5777 | 85.1944 | 92.3644 | 105.9668 |

**Source**:

6/30/97 data: 1997 annual access filing TRPs, IND-1, col. (I), row 310, 250. Ameritech Trans. 1106, Bell Atl. Trans. 977, BellSouth 7/7/97 letter filing, NYNEX Trans. 461, Pacific Trans. 1925, SWBT Trans. 2645, U S West Trans. 854.

Current data: January 1, 2000 filing TRPs, IND-1, col. C, rows 310, 250 Ameritech Trans. 1226, Bell Atl. Trans. 1236, BellSouth Trans. 535, Pacific Trans. 2091, SWTR Trans. 2799, U S West Trans. 1037

### 2. ILEC Pricing Flexibility Poses Significant Risks if Competitors Cannot Provide Special Access Services Using UNEs

The harm to competitors and customers resulting from an extension of the Supplemental Order's use restriction will become acute if the ILECs begin to obtain pricing flexibility under the Pricing Flexibility Order's Phase I/Phase II framework. Only broad-based competition facilitated by unbundled loop and transport combinations can limit the risks presented by ILEC pricing flexibility.

First, unbundled loop and transport combinations are necessary to prevent ILECs that have obtained "Phase I" contract pricing authority from implementing an anticompetitive price squeeze. In the Pricing Flexibility Order, the Commission adopted a Phase I trigger that allows the ILECs to obtain contract pricing authority while CLEC networks are still extremely limited in scope.[32] If CLECs are forced to rely on ILEC retail special access services to extend the reach of their networks, ILECs with contract pricing authority can implement a price squeeze by offering a low-priced contract to the customer and simultaneously increasing rates for the special access services required by CLECs. Such price squeezes can be avoided only if CLECs are permitted to "fill in" their networks using TELRIC-priced unbundled network elements.

Broad-based competition facilitated by unbundled loop and transport combinations is also necessary in "Phase II" cities where ILECs are able to remove their special access services from price cap regulation. Even the Commission has

[32] Pricing Flexibility Order at ¶ 93 (ILECs are entitled to Phase I pricing flexibility once at least one competitor has collocated in wire centers accounting for only 30 percent of the incumbent LECs' revenues from transport services and special access services other than channel terminations).

acknowledged that the Phase II test does not guarantee that all services in an MSA are subject to effective competition.[33] And, there are growing indications that the Phase II test is even weaker than the Commission realized. In a recent filing in CC Docket No. 96-98, the ILECs stated that they already meet the Phase II test in 142 of the 320 MSAs served by the RBOCs and GTE, representing fully 72 percent of RBOC and GTE special access revenues.[34] There is absolutely no marketplace evidence that effective competition is as widespread as the Phase II test suggests.[35]

Because the weak Phase II test is likely to release the ILECs' special access services from price cap regulation before there is effective competition, special access customers in many cities face the prospect of higher special access rates if the Supplemental Order's use restriction remains in effect. Only broad-based competition facilitated by unbundled loop and transport combinations can limit the pricing power that ILECs will continue to enjoy in Phase II cities.

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[33] Pricing Flexibility Order at ¶ 155 ("We recognize that the regulatory relief we grant upon a Phase II showing may enable incumbent LECs to increase access rates for some customers.")

[34] USTA Comments at 10, CC Docket No. 96-98, January 19, 2000 (citing the "Special Access Fact Report" attached to USTA's Comments). According to USTA, 142 MSAs meet the 65 percent threshold, which is the Pricing Flexibility Order's Phase II trigger for transport services and special access services other than end user channel terminations. Pricing Flexibility Order at ¶ 149; 47 C.F.R. § 69.709(c).

[35] If the Phase II test were a reliable indicator of effective competition, and can already be met in cities representing 72 percent of the ILECs' special access revenues, one would expect to see some evidence that competition is already constraining ILEC pricing. As discussed above, however, the ILECs continue to price their trunking basket services at the maximum permitted by the price cap rules and have actually been able to increase rates for less-competitive DS1 and voice grade circuits.

In the Access Reform Order, the Commission adopted the market-based approach to access reform because "interstate access services can be replaced with . . . the functionality offered by unbundled elements" and "these [unbundled network element] policies will greatly facilitate competitive entry into the provision of all telecommunications services."[36] The Commission also determined that, if competitors could use unbundled network elements to provide interstate access services, the market-based approach would have to provide the ILECs with pricing flexibility.[37] It would be arbitrary and capricious for the Commission to allow one piece of the "market-based" approach to access reform – the ILEC pricing flexibility adopted in the Pricing Flexibility Order – to proceed, while the foundation for the "market-based" approach – competitors' ability to use UNEs to provide interstate access services – is suspended for an indefinite period.

### C. At a Minimum, the Commission Should Suspend the Pricing Flexibility Rules Until it Resolves the Fourth FNPRM

As discussed above, the Commission should not extend the use restriction adopted in the Supplemental Order. If the Commission does, nonetheless, extend the use restriction, it should take steps to limit the impact of the use restriction on customers and competitors in the special access market.

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[36] Access Reform Order, 12 FCC Rcd at 16094, ¶ 262.

[37] Access Reform Order, 12 FCC Rcd at 16003, ¶ 49 ("As we acknowledged in the NPRM, a market-based approach will permit and, indeed, require us progressively to deregulate the access charge regime as competition develops.")

- ***Target Special Access X-Factor Reductions to DS1 and Voice Grade***

As long as the use restriction remains in effect, customers of less-competitive lower-capacity services will not benefit from the broad-based competition that could be facilitated by unbundled loop and transport combinations. As discussed above, customers of DS1 and voice grade services have actually seen their rates increase over the past three years. To limit the harm that an extension of the use restriction would cause to customers of these services, the Commission should (1) apply a 6.5 percent X-factor in all years; and (2) require the price cap ILECs to target the special access X-factor reductions to the DS1 and voice grade service categories until the Commission issues a final order resolving the issues raised in the Fourth FNPRM.[38] Targeting of a 6.5 percent X-factor would offset some of the harm resulting from a delay in the development of broad-based competition, and would also partially correct for the Access Reform Order's policy of targeting X-factor reductions to the TIC in the 1997, 1998 and 1999 annual access filings.

- ***Suspend the Phase I and Phase II Pricing Flexibility Rules***

If the Commission extends the Supplemental Order's use restriction, it should suspend the Phase I and Phase II pricing flexibility rules on an "interim" basis until it issues a final order resolving the Fourth FNPRM. A temporary suspension of these rules would be consistent with the Commission's statement, in the Supplemental Order, that it seeks to "avoid disturbing the status quo" while it considers "the legal and economic

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[38]The targeted amount should be allocated between the DS1 and voice grade service categories in proportion to the revenues in each service category.

implications" of unbundled loop and transport combinations.[39] The "legal and economic implications" of unbundled loop and transport combinations include not only the impact that permitting these combinations would have on ILEC special access revenues, but also the impact that restricting these combinations would have on CLECs and special access customers if the ILECs obtained pricing flexibility.[40] Thus, to "avoid disturbing the status quo," the Commission should prevent the ILECs from obtaining pricing flexibility until it resolves the Fourth FNPRM. To date, no ILEC has applied for Phase I and Phase II pricing flexibility.

## III. The Modified CALLS Plan Offers Only a Modest Improvement Over the Original Plan

A delay in the development of broad-based special access competition is too high a price to pay for the modified CALLS plan. At best, the modified plan offers a modest improvement over the original plan. In general, the positive changes are less significant than they first appear, and are offset by negative changes such as higher multiline business PICC rates and the reinstatement of the low-end adjustment.

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[39] Supplemental Order at ¶ 7.

[40] While the Supplemental Order's discussion was limited to the impact of unbundled loop and transport combinations on ILEC special access revenues, the discussion was limited to this issue only because the Commission adopted the Supplemental Order's use restriction before seeking public comment on the implications of the use restriction. When the Commission adopted the Supplemental Order, it had heard only from the ILECs. Now that MCI WorldCom has had the opportunity to point out the interaction between ILEC pricing flexibility and the use restriction, in its comments and reply comments on the Fourth FNPRM, the Commission must take pricing flexibility concerns into account if it extends the use restriction beyond June 30, 2000.

## A. The CALLS Plan Does Not Address the Inflated Level of ILEC Revenues

One of the changes proposed by the modified plan would require the ILECs to take additional first-year revenue reductions, in addition to those resulting from the normal operation of the price cap mechanism, to the extent necessary to provide for $2.1 billion in switched access reductions.

While the additional first-year revenue reduction is a positive change, its significance should not be overstated. First, MCI WorldCom estimates that ILEC revenues in the first year of the modified CALLS plan will be only about $400 million less than their revenues would have been under either the original CALLS plan or the current rules.[41] While the modified plan would eliminate a portion of local switching, rather than transferring it to the common line basket, the effect of this modification to the plan is offset in part by the effect of only applying a 3 percent X-factor to the special access basket, rather than the 6.5 percent X-factor that would be applied under the current rules or the original CALLS plan.

Attachment 3 shows that total ILEC revenues over the five years of the modified CALLS plan would still be greater than total ILEC revenues over the same period under the current rules. In the first year of the plan, as discussed above, ILEC revenues would be about $400 million less than under the current rules. In the second year, ILEC revenues would be about the same as under the current rules. In the later years, ILEC

[41]See Attachment 3, page 1.

revenues would be significantly higher than under the current rules – about $2.5 billion per year higher by the 2004-2005 tariff year.

Given that it is universally acknowledged that interstate access charges are currently far above cost, it is contrary to the public interest for the Commission to adopt an access reform plan that is revenue neutral, much less one that actually increases ILEC revenue. There is even less justification for an access reform plan that increases the ILECs' revenue and has required the Bureau to agree to extend the unlawful use restriction adopted in the Supplemental Order for at least another year. The unlawful use restriction is far too high a price to pay for an access reform plan that is only a modest improvement over the original CALLS plan and would still provide the ILECs with more revenue than the current rules.

## B. Retention of the Low-End Adjustment Mechanism Allows the ILECs to Take Back Part of the Only Concession They Have Made

The original CALLS plan would have eliminated the low-end adjustment mechanism as part of an implicit bargain in which the LECs would allow the competitive process to work, as long as they were permitted to restructure their rates in what they believed was a more economically rational manner. CALLS went so far as to make the bold statement that "there is no 'revenue guarantee' under the CALLS plan" because "[p]rice cap LECs will have to retain and win customers in order to retain